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REPORT

UPON THE

CONSTITUTIONAL RIGHTS

AND

PRIVILEGES

OF

HARVARD COLLEGE;

AND UPON THE

DONATIONS THAT HAVE BEEN MADE TO IT

BY

THIS COMMONWEALTH.



*Massachusetts State
Constitutional Convention, 1820*

Butcher

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1821.

Commonwealth of Massachusetts.

IN CONVENTION, December 30, 1820.

Ordered, That Messrs. D. WEBSTER, of Boston, DEARBORN, of Roxbury, WILDE, of Newburyport, TILLINGHAST, of Wrentham, and SALTONSTALL, of Salem, be a Committee to inquire into and report upon the Constitutional Rights and Privileges of the Corporation of HARVARD COLLEGE; and to report, also, an account of the donations which have been made to that Corporation by the Commonwealth..

ATTEST,

BENJAMIN POLLARD, *Secretary*.

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Commonwealth of Massachusetts.

IN CONVENTION, Jan. 4, 1821.

THE Committee appointed to inquire into and report upon the *Constitutional Rights and Privileges of the Corporation of Harvard College*; and to report also, an account of the donations which have been made to that Corporation by the Commonwealth; ask leave now to

REPORT:

That, in the year one thousand six hundred and thirty six, the General Court of the Colony agreed to appropriate £400 towards a SCHOOL, or COLLEGE. In the year following, it was ordered that an Edifice should be erected for that purpose at *Newton*, and twelve gentlemen were appointed a Committee to have charge of the subject. In 1638, the name of *Newton* was changed to that of *Cambridge*; and it was ordered, that the College, to be erected at Cambridge, should be called HARVARD COLLEGE, in honor of the Rev. JOHN HARVARD, of Charlestown, who had contributed liberally to the fund. And in 1640, the Rev. HENRY DUNSTER was appointed first PRESIDENT. At this time, the property, appropriated to the support of the College, by the General Court, had not been vested in any persons whatever. It remained the property of the Colony, and was managed by a Committee of the General Court, or by the Magistrates and Elders, by authority of the General Court. This being found an inconvenient mode of administering the fund, an act was passed, in

1642, by which the Governor, Deputy Governor, and Magistrates, and the Teaching Elders, of the the Towns of *Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester*, together with the President of the College, were constituted a Board of OVERSEERS, with power to make orders, statutes, and constitutions, for the rule and government of the College, and to manage and dispose of its lands and revenues. The fund remained in this situation until the year 1650, when the General Court, on the application of the President, granted a CHARTER, by which seven persons, to wit, the President of the College and the Treasurer, *ex officio*, and five individuals, by name, were constituted a CORPORATION, by the name of the "PRESIDENT AND FELLOWS OF HARVARD COLLEGE," to have perpetual succession, and with power to fill vacancies, occurring in their own body, by their own election, with the consent of the Overseers. All powers of Government, the whole management and control of the property and funds, and direction and instruction of the Students, appear by this charter, to have been conferred on the President and Fellows; with a provision, however, that the acts of the Corporation, should not take effect until the approbation or assent of the Overseers was obtained.

It appears soon to have been found, that a great inconvenience arose from holding all orders, by-laws and acts of the Corporation in suspense, until the pleasure of the Overseers could be known; and on *that* account, on the application of the Overseers, a SUPPLEMENTAL CHARTER was granted, in 1657, by which all orders, by-laws and other acts of the President and Fellows were to have immediate force

and effect; subject, however, to be reversed, or rescinded by the Overseers, if they should not approve them. By these CHARTERS, all the property, appertaining to the College, became vested in the President and Fellows, for the purposes of the Institution; and all powers of superintendence and control were in like manner conferred on them, subject, as before mentioned, to the approbation or disapprobation of the Overseers. The Government of the Colony was the Founder of this Institution; not in consequence of having granted the Charter, but in consequence of having made the first endowment. As Founder, it was entirely competent to the Government to prescribe the terms of the Charter, to grant the property, subject to such limitations as it saw fit, and to vest the power of visitation and control, wherever it judged most expedient. This power, the Government thought proper to vest, to the extent, and in the manner before mentioned, in the Board of Overseers; and subsequent donors had a right, of course, to expect, that donations, made by them, would be managed, and applied to their intended objects, by the College Government, thus constituted, without substantial variation. Between the year 1657, (the date of the Supplemental Charter) and the time of the Provincial Charter of William and Mary, sundry alterations were proposed in the Charter of the College; such as, among other things, to give the College Government civil jurisdiction, in certain cases, after the manner adopted in other Institutions. None of these alterations, however, took place. By the Provincial Charter, in 1691, the Crown of England confirmed to the College, as well as to other bodies, corporate and poli-

tic, all its property, powers, rights, privileges and immunities. At subsequent periods, attempts were again made, for further alterations of the Charter, but without success.

By the present Constitution of the Commonwealth, adopted in 1780, it is well known, all the powers, authorities, rights, liberties, and immunities of the College were expressly confirmed ; and all gifts, devises and legacies, made or given to it, declared to be forever bound and applied to their respective purposes, according to the will of the donors. And, inasmuch as the Revolution, and the establishment of a New Government, had made it necessary to declare who should be deemed successors to those persons, who, under the old Government had been, *ex officio*, members of the Board of Overseers, it was declared, that the Governor, Lieut. Governor, Council and Senate, should be such successors ; and that they, with the President of the College, and the Ministers of the Congregational Churches, in the Towns of *Cambridge, Watertown, Charlestown, Boston, Roxbury* and *Dorchester*, should constitute the Board of Overseers ; with a provision, that the Legislature might, nevertheless, for the advantage of the College, and the interest of Letters, make alterations in its Government, in the same manner, as they might have been made by the Provincial Legislature. In the Constitution of the Corporation no change has been made, since the date of the first charter ; but within the last ten years, several laws have passed, having for their object, modifications of the Constitution of the Board of Overseers. Some of these laws have passed with the assent, and on the application of the Corpora-

tion and Board of Overseers ; and one of them has passed without the previous consent of either. The last Law on this subject is the Act of February, 1814, which passed with an express provision, that its validity should depend on the assent of the Board of Overseers, and of the Corporation. Both of these bodies assented to, and accepted this act, and the present actual government of the College is conformable to its provisions. It may be useful to state here, how the Government of the College is at present formed and constituted, under this law.

In the first place then, the Corporation, as before mentioned, exists in the form prescribed by the first charter.

It consists of seven members ; it invests the revenues, protects the property, and has the immediate charge of the interests of the College ; and it appoints Professors, Tutors, and other officers ; subject, however, in all these appointments, to the approbation or disapprobation of the Board of Overseers. The Board of Overseers is composed of the Governor, Lieut. Governor, Council, Senate, Speaker of the House of Representatives, and President of the College, together with fifteen Ministers of Congregational Churches, and fifteen Laymen, all inhabitants within this State, elected, and to be elected, as vacancies occur, by the Board itself. If the contemplated arrangement, as to the number of Senators and Councillors, hereafter to be chosen in the State, shall take place, this Board will consist of SEVENTY SEVEN members ; of whom forty six will be such persons as shall be annually chosen by the people, into the offices of Governor, Lieut. Governor, Councillors, Senators, and Speaker of the House of

Representatives ; and thirty other persons, such as these officers, being themselves a majority of the Board, shall, with the other members, see fit, from time, to time, to elect, to fill the vacancies which may occur.

Such is the existing Constitution of the Government of this Institution ; and, with one exception, hereafter to be mentioned, the Committee are of opinion, that it is a well contrived and useful form of government. The Corporation consists of but few persons ; they can, therefore, assemble frequently, and with facility, for the transaction of business, either regular or occasional. The Board of Overseers, having a negative on the more important acts of the Corporation, is a large and popular body, a great majority of its members being such as are annually elected to places of the highest trust in the Government by the people themselves. A more effectual control, over the proceedings of the Corporation, cannot be desired.

Indeed if a new government were now to be framed, for an University, independent of all considerations of existing rights and privileges, the Committee do not know that a better system could probably be devised. The history and present state of the institution, speak the most decisively, as well on the plan of its government, as on its administration. As to the care and management of the funds, it is believed to have been cautious, and exact, in a very high degree. No delinquency, to the amount of a single shilling, is known to have existed in any member of the corporation, or any of their agents or servants, from the time of the first donation, in sixteen hundred and thirty six, to the present moment.

How far this Government of the University has been found competent to conduct its literary concerns, and to what respectability, and distinction, among the institutions of the country, it has raised it, neither the Members of this Convention, nor the citizens of this Commonwealth, nor the people of the United States, need be informed.

The exception, before alluded to, is, that, by which the Clergymen, composing part of the Board of Overseers, are to be elected from Christians of a particular denomination. However expedient, or indeed however necessary, this might have been originally, the Committee are of opinion, that no injury would arise, from removing the limitation, and that such a measure would be satisfactory. It seems to have been taken for granted, that the Legislature, with the consent of the Corporation and Overseers, had power to modify the Constitution of the Board of Overseers, in the manner prescribed by the Act of 1814. In the opinion of the Committee, however, modifications of the Government of this most important Institution should not rest merely on the authority of Legislative acts. Those who formed the Constitution, in 1780, appear to have deemed the subject of such high importance as to require Constitutional Provisions, and the Committee are of opinion, that that precedent is fit to be followed. They have, therefore, deemed it proper to recommend to the Convention to propose an article to the Constitution, removing the restriction before mentioned, and confirming, in all other respects, the existing Constitution of the College. Having communicated this opinion to the Corporation, and to the Board of Overseers, both these bodies have signified

their consent, to such an article ; as may be seen by their votes, certified copies of which, accompany this Report.

The Committee have no further remarks to make on the Constitutional rights and privileges of the College, except, that like all other Charities, it is under the dominion, and control of the Law. All officers and servants of any Institutions, whether established for the purpose of Religion, or Learning, or the relief of the indigent, are answerable for a strict and faithful execution of their trust. And any individual, who may be injured, has his remedy, as promptly as in other cases of injury. Or if any abuse, or perversion of the funds, be known or suspected, a full account may be called for, and ample justice administered, in the tribunals of the country. The Committee make this remark, in order that there need exist no jealousy in the public towards any charitable Institutions in the State, arising from an apprehension that there is, or can be, any immunity in such Institutions, for mal-administration, any concealment of their transactions, any unseen or unknown mismanagement of their property, or any exemption from a full and perfect legal responsibility for all their conduct.

The Committee now proceed to the second object of their appointment ; which was to obtain an account of the donations which have been made to the College, by the Commonwealth ; and although not within the letter of their instructions, the Committee have thought fit to inquire into those other aids, besides immediate donations, which the College has received from the State ; and also into the proportion which the public grants bear to private and individual donations.

The Committee, in making this inquiry, have conferred with the President, the Treasurer, and another member of the Corporation, as a Committee of that Board, attending at the request of the Committee; and from these gentlemen, have received all the information which they have requested.

As has been already observed, the Colony gave £400, for the first endowment of the Institution. In 1640, it granted to the College the right of keeping a Ferry over Charles River. For many years this privilege was of little importance, not yielding a net income of more than twelve pounds annually; it gradually increased, however, and was of so much consequence, when Charlestown Bridge was erected, in 1786, that the proprietors of that bridge became bound, in their charter, to pay the College £200, annually, for the loss of their ferry. Two other bridges, more recently erected over the same river, for a similar reason, pay to the College, each the sum of one hundred pounds annually.

In addition to this grant of the ferry, which, as has been before observed, was of little importance, in early times, the General Court of the Colony was in the practice of making annual grants, in aid of the College, and to assist in the payment of the salaries of the President, Professors, and Tutors. This practice was long continued, and did not entirely cease until after the revolution. These sums being given to maintain the College from year to year, were of course appropriated and exhausted as fast as they were received, and no fund, consequently, was ever produced by them.

Before the Revolution, certain lands, in Maine, were given to the College by the General Court, from

which it has realized eight thousand dollars, and does not expect to receive above seven thousand more. Massachusetts Hall was built by the Province, in 1723 ; Hollis Hall, in 1763 ; and on the burning of Harvard Hall, while in possession of the General Court, in 1765, it was rebuilt at the public expense. Holworthy Hall, and Stoughton Hall, were built principally by the proceeds of Lotteries, authorized by the Legislature, but managed and conducted at the expense and risk of the College. In 1814, on the petition of the College, the Legislature granted it ten thousand dollars a year, for ten years, out of the proceeds of the tax on Banks. Three objects were intended to be answered by the application for, and reception of, this liberal and munificent grant. The College had undertaken to build University Hall, an edifice which it deemed necessary and essential, but the cost of which pressed hard upon its funds. The first object of the grant was, to pay the expense of this building. It was desirable, also, that there should be a building erected for the use of the Medical School ; and, lastly, a fund was wanted for the charitable support of necessitous young men of merit, the sons of poor parents, who, without the aid of charity, could not go through a course of education ; and in whose possession of the means of knowledge, the State supposed itself to have an interest. University Hall and the Medical College have accordingly been built ; and that part of the annual grant (one quarter of the whole) which was destined to purposes of charity has been so applied.

Six years, of the ten, have now expired, and University Hall having been built at an expense

of sixty five thousand dollars, and the Medical College at an expense of about twenty thousand dollars, and one quarter part of the grant, being, as before mentioned, appropriated to the use of necessitous scholars, when the four remaining years shall have expired, the College will have invested and applied the whole amount of the grant, with ten thousand dollars of its own funds, to the purposes for which the grant was made. The Committee have inquired particularly into the manner in which this charity is distributed, and they think it wise, impartial and efficacious. In the first place, it is given to none but those who apply for it, and who clearly shew, by proofs from their Instructors, their Ministers, the Selectmen of their town, or otherwise, that they and their friends are necessitous, and unable to supply the means of education. In the next place, it is required that they should be persons of fair character and good behaviour; and when it is ascertained that the applicant possesses a fair character, and that he is necessitous, he is admitted to partake in the benefit. The scale of merit, kept by the Instructors of the Classes, is then referred to, and among those who are thus necessitous and of fair character, such as give most proof of talent and promise receive most; those who give less, receive less. It may be added, that this charity is confined to young men of this State. The Committee do not know how a plan could be devised more likely to give effect to the intention of the Legislature. This donation, by the Act of 1814, is the only direct grant of money, by the State, since the year 1786.

In order to compare the amount of donations made by the State, with that of donations by indi-

viduals, the Committee have proceeded to inquire into the origin of the College funds, generally; and have received on this subject, also, from the corporation, all the information desired.

The amount of all the personal property holden by the College, and yielding an income, does not exceed three hundred thousand dollars. Of this, more than two hundred thousand dollars consist of donations made by individuals to specific and particular objects; so that over this part of the funds, the Corporation has no other control whatever, than to apply the annual proceeds thereof according to the will of the donor.

A munificent individual, for instance, chooses to establish a Professorship, in any branch of literature, and for this purpose makes a donation to the College, and in his deed, or other instrument of gift, limits the application of the proceeds of the fund to this particular object. In such case the Corporation has nothing to do, but to see the fund properly invested and secured, and that a fit person be appointed Professor, to receive the income of it for his support. So, of funds given to aid poor scholars, to augment the library, and other similar objects.

Of the remainder of the personal property, a considerable portion, viz. about eighteen thousand dollars, arises from private donations, for objects not immediately connected with the College; such as the maintenance of missionaries, and in one instance, of a grammar school. The general unappropriated fund of the College, vested in personal property, yielding an income, deducting some debts now chargeable upon it, is fifty five thousand dollars. The real estates of the College, except the public

edifices before mentioned, are derived, principally, from the donations of individuals; but partly from purchases made from the College funds. The whole income of its real estates, including what it receives from the proprietors of the several bridges, amounts to five thousand dollars annually; of which one thousand is appropriated to specific objects by the donors. The sums received from students, as rents for the apartments occupied by them, are usually absorbed in the repairs of the various College buildings. The income of that part of the personal property, which is not appropriated to specific objects, and of that part of the real estate, in like manner, not appropriated to specific objects, constitutes the general disposable income of the College, applicable to its general purposes; such as paying the Instructors and Officers, defraying occasional expenses, and making up, in some cases, a deficiency in a particular specific donation, so that the object of the donor may be effected, and the public enabled to receive the benefit of his gift.

The amount of this general disposable income still falls so far short of its object, that a large sum is necessarily raised by Tuition fees. The whole annual expenditure of the College, including all the general and specific objects, is, at this time, about thirty thousand dollars, of which, seventeen thousand are paid by the proceeds of College Funds, general and specific, and the residue by tuition fees, and other charges on the students. The President, twenty Professors in the several departments of Science, Literature, Divinity, Law and Medicine; six Tutors, the Librarian, Steward, and other officers, are paid out of these receipts; as also the ex-



pense of Books for the library, apparatus for the philosophical and chemical departments, and other daily expences incident to such an Institution. The accounts of the Treasurer, of the receipt and disbursement of the monies of the Institution, are, from time to time, audited by a Committee of the Corporation, and also by a Committee of the Board of Overseers.

From this account of the state of the funds, it is evident that the establishment of the Institution, on the present enlarged plan, is not, and cannot be, kept up, but by the help of tuition fees. And donations and additions to the general and disposable funds of the College, would be highly useful to the public, as they would diminish the necessary expense of education.

In pursuance of the opinion formed by the Committee on that part of the subject committed to them, which respects the Constitutional Rights and Privileges of the College, they recommend the adoption of the following Resolution, viz. :

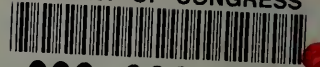
1 *Resolved*, That it is proper to amend the
 2 Constitution, by providing, that the rights and
 3 privileges of the President and Fellows of Har-
 4 vard College, and the Charter and Constitution
 5 thereof, and of the Board of Overseers as at
 6 present established by law, be confirmed ; with
 7 this further provision, viz. : That the Board
 8 of Overseers, in the election of Ministers of
 9 Churches to be members of said Board, shall
 10 not be confined to Ministers of Churches of any
 11 parti *c*ular denomination of Christians.

For the Committee,

D. WEBSTER.

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